

the class as originally certified by the Court included prisoners while housed at the Pack Unit. On July 19, 2017, the Court ordered temporary relief including, for some, lowered housing temperatures. [ECF # 769]. The order was formalized as a final compliance plan on August 8, 2017. [ECF # 771]. Pursuant to that ordered relief, prisoners housed at the Pack Unit either were moved to air-conditioned facilities (if members of the heat-sensitive subclass), or accorded other relief provided in the Court's order. Importantly, as part of the compliance plan represented to the Court during the August 8th hearing, subclass members being moved to air-conditioned facilities were expressly to be returned to the Pack Unit. Transcript of Status Hearing at 51:20–23 (Aug. 8, 2017).

The parties agree that the proposed settlement class includes all of the men who were intended to be protected under the July 19, 2017 Preliminary Injunction and the original class definition. The Stringfellow evacuees were transitory and temporary beneficiaries while at the Pack Unit. From the outset, there was never an intention to provide evacuees any type of permanency in the Pack Unit. [ECF # 796-1 at 3]. In other words, there was an intention to provide ongoing housing at the Pack Unit for what is now the proposed settlement class while not so for the later, transitory prisoners who were housed there. It is an important distinction in evaluating class membership and the impact of the settlement terms upon both groups.

The Court's proposed notice communicates to these later, transitory prisoners, that the settlement excludes them from the class; rather than communicating that being moved away from the Pack Unit following the evacuation removed them from the class, regardless of the settlement. This is not the parties' understanding of the original class. In this sense, the notice will invite objectors from non-class members who are not affected by the settlement.

With over 1,000 Stringfellow evacuees who temporarily resided at the Pack Unit plus the proposed settlement class, maintaining both the proposed settlement class and the evacuees at the Pack Unit is a practical impossibility and therefore irreconcilable with the other settlement terms.

Accordingly, Defendants are not opposed to the revisions to the proposed notice reflected in Plaintiffs' filing, ECF #1029.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I, **Leah O'Leary**, Assistant Attorney General of Texas, do hereby certify that Counsel for TDCJ conferred with Plaintiffs' lead counsel by email and by phone on March 13, 2018 regarding the this filing and its contents.

/s/ Leah O'Leary
LEAH O'LEARY
Assistant Attorney General

NOTICE OF ELECTRONIC FILING

I, **Leah O'Leary**, Assistant Attorney General of Texas, do hereby certify that I have electronically filed this pleading in accordance with the Electronic Case Files System of the Southern District of Texas, on March 13, 2018.

/s/ Leah O'Leary
LEAH O'LEARY
Assistant Attorney General

CERTIFICATE OF SERVICE

I, **Leah O'Leary**, Assistant Attorney General of Texas, certify that a true and correct copy of the foregoing has been served to all attorneys of record by electronic notice in accordance with Rule 5(b)(2) of the Federal Rules of Civil Procedure on March 13, 2018.

/s/ Leah O'Leary
LEAH O'LEARY
Assistant Attorney General